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C O N F I D E N T I A L TOKYO 006896

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E.O. 12958: DECL: 12/07/2011

TAGS: MARR PREL PGOV JA

SUBJECT: AGREEMENT REACHED ON GSOMIA TEXT

Classified By: Ambassador J. Thomas Schieffer, reasons 1.4 (b, d).

¶1. (C) SUMMARY: U.S. and Japanese negotiators reached substantial agreement November 29 on the text of a General Security of Military Information Agreement (GSOMIA), which will set uniform rules across the Japanese government for handling U.S.-origin classified military information. The GSOMIA should enable smoother and swifter exchange of such information with Japan, especially at the military level. MOFA contacts expect the text to be endorsed by the Cabinet no later than March; no Diet approval is required. END SUMMARY.

¶2. (C) A U.S. negotiating team, led by OSD/ISP Director Ronald Zwart and Deputy Director David Sobyra, reached agreement with Japanese counterparts November 29 on the text of a General Security of Military Information Agreement (GSOMIA), designed to set uniform rules for the handling of each countries' classified military information.

¶3. (C) The agreement commits both sides to "substantially equivalent" treatment, handling, transmittal and storage of each others' classified military information. Exact procedures to implement the agreement are largely left up to each party to define, with periodic reciprocal security assessment visits to confirm that substantially equivalent procedures are in place. The GSOMIA should enable smoother and swifter exchange of such information with Japan, especially at the military level. See para 8 for bilaterally agreed GSOMIA text.

¶4. (C) MOFA will likely submit the text for Cabinet Office legal review in January, with final approval by the Cabinet no later than March (no Diet approval required), according to MOFA U.S.-Japan Security Treaty Division contacts. Before that happens, say the contacts, the various Japanese government agencies that handle the classified military information covered by the agreement will review their internal procedures to ensure they are in compliance with the terms of the GSOMIA text.

¶5. (C) MOFA contacts say they will seek reference to at least "substantial agreement" on the GSOMIA in a possible "2 2" statement in mid-January.

¶6. (U) Embassy understands that action now lies with State's Office of the Legal Advisor (L) to review and clear on the text. The agreement requires English and Japanese language versions to be equally valid; Embassy will forward MOFA's

Japanese version to L as soon as received.

17. (C) Progress on the text indicates Japan has overcome inter-agency differences that caused resistance to a GSOMIA for 25 years, and made it the only major U.S. ally without such an agreement. The agreement on the text reached November 29 is the culmination of negotiations begun in 2003.

Inter-agency buy-in was evident in the broad representation in the Japanese delegation at the talks. Japanese representatives included the Japan Defense Agency, Cabinet Intelligence and Research Office, Public Security Information Agency, Cabinet Satellite Office, National Police Agency, and Japan Coast Guard.

18. (U) Begin bilaterally agreed GSOMIA text:

AGREEMENT BETWEEN THE GOVERNMENT OF JAPAN AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING SECURITY MEASURES FOR THE PROTECTION OF CLASSIFIED MILITARY INFORMATION

PREAMBLE

The Government of Japan and the Government of the United States of America (hereinafter referred to as "the Parties" and separately as "a Party"),

Affirming that the Japan-United States security arrangements, based on the Treaty of Mutual Cooperation and Security between Japan and the United States of America signed at Washington on January 19, 1960, is the cornerstone for achieving common security objectives,

Recognizing that the Mutual Defense Assistance Agreement between Japan and the United State of America signed at Tokyo on March 8, 1954, and the arrangements made thereunder have provided for the reciprocal exchange of defense-related information,

Recalling that, at the meeting of the Security Consultative Committee on October 29, 2005, the Ministers expressed their commitment to take additional necessary measures to protect shared classified information so that broader information sharing is promoted among pertinent authorities,

Desiring to further mutual cooperation to ensure that protection of classified military information;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purpose of this Agreement,

(a) "Classified Military Information" (hereinafter referred to as "CMI") means any defense-related information that is generated by or for the use of or held by the Department of Defense of the United States of America or the Japan Defense Agency, or defense-related information generated by or for the use of or held by other relevant authorities of the Government of the United States of America or the Government of Japan, and that requires protection in the interests of national security of the originating Party. The information shall bear a security classification and, where necessary, an appropriate indication to identify such information as CMI. Such information may be in oral, visual, electronic, magnetic or documentary form, or in the form of equipment of technology;

(b) "national laws and regulations" means,
(i) in relation to Japan, the laws listed in the Annex attached hereto and other relevant laws and regulations, and
(ii) in relation to the United States of America, the laws which will be notified by the Government of the United States of America to the Government of Japan through the diplomatic channel and other relevant laws and regulations;

(c) "personnel security clearance" means an eligibility for handling securely CMI granted to individuals in accordance with each Party's appropriate procedures.

ARTICLE 2

PROTECTION OF CMI

CMI provided directly or indirectly by one Party to the other Party shall be protected under the terms set forth herein, provided that they are consistent with the national laws and regulations of the recipient Party.

ARTICLE 3

CHANGES IN NATIONAL LAWS AND REGULATIONS

Each Party shall notify the other of any changes to its national laws and regulations that would affect the protection of CMI under this Agreement. In such case, the Parties shall consult, as provided for in Article 19(b), to consider possible amendments to this Agreement. In the interim, CMI shall continue to be protected in accordance with the provisions of this Agreement, unless otherwise approved in writing by the releasing Party.

ARTICLE 4

SECURITY CLASSIFICATION AND MARKING OF CMI

For the Government of the United States of America, CMI shall be marked Top Secret, Secret, or Confidential. For the Government of Japan, CMI that is designated as "Defense Secret" according to the Self-Defense Forces Law shall be

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marked "Bouei Himitsu", and the other CMI that is not designated as "Defense Secret" shall be marked "Kimitsu", "Gokuhi", or "Hi" depending on the sensitivity of the information concerned.
"Bouei Himitsu" that bears the additional marking "Kimitsu" shall be afforded a degree of protection equivalent to the U.S. "Top Secret." "Bouei Himitsu" shall be afforded a degree of protection equivalent to U.S. "Secret."

Equivalent classifications shall be as follows:

United States	Japan
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Top Secret	Kimitsu / Bouei Himitsu (Kimitsu)
Secret	Gokuhi / Bouei Himitsu

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Confidential	Hi
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//Japanese characters to be added to table in final text//

Each recipient Party shall stamp or mark the name of the releasing Party on all CMI. The CMI shall also be marked with the equivalent security classification of the recipient Party.

ARTICLE 5

SUPPLEMENTAL IMPLEMENTING ARRANGEMENTS

Supplemental implementing arrangements under this Agreement may be entered into by competent authorities of the Parties. For the Government of the United States of America, the competent authority shall be the Department of Defense. For the Government of Japan, the competent authority shall be identified by the Government of Japan and notified by it to be Government of the United States of America through the diplomatic channel.

ARTICLE 6

PRINCIPLES FOR PROTECTING CMI

The Parties shall ensure that:

- (a) The recipient Party shall not release the CMI to any government, person, firm, institution, organization, or other entity of a third country without the prior written approval of the releasing Party;
- (b) The recipient Party, in accordance with its national laws and regulations, shall take appropriate measures to provide to the CMI a degree of protection substantially equivalent to that afforded by the releasing Party;
- (c) The recipient Party shall not use the CMI for any other purpose than that for which it was provided, without the prior written approval of the releasing Party;
- (d) The recipient Party shall observe intellectual property rights such as patents, copyrights, or trade secrets which are involved in CMI;
- (e) Each governmental facility that handles CMI shall maintain a registry of individuals with personnel security clearances and who are authorized to have access to such information; and
- (f) Procedures for identification, location, inventory and control of CMI shall be established by each Party to manage the dissemination of and access to CMI.

ARTICLE 7

PERSONNEL ACCESS TO CMI

- (a) No government official shall be entitled to access to CMI solely by virtue of rank, appointment, or a personnel security clearance.
- (b) Access to CMI shall be granted only to those government officials whose official duties require such access and who have been granted a personnel security clearance in accordance with the national laws and regulations of the recipient Party.
- (c) The Parties shall ensure that the determination on the granting to a government official of a personnel security clearance is consistent with the interests of national security and based upon all available information indicating whether the government official is trustworthy and reliable in the handling of CMI.
- (d) Appropriate procedures shall be implemented by the Parties to ensure that the criteria referred to in the preceding paragraph have been met, in accordance with the national laws and regulations of each Party, with respect to any government official to be granted access to CMI.
- (e) Before a representative of one Party releases CMI to a representative of the other Party, the recipient Party shall provide to the releasing Party an assurance that: the representative possesses the necessary level of personnel security clearance; the representative requires access for official purposes; and that the recipient Party, in accordance with its national laws and regulations, shall take appropriate measures to provide to the CMI a degree of protection substantially equivalent to that afforded by the releasing Party.

ARTICLE 8

VISIT PROCEDURES

Authorizations for visits by representatives of one Party to facilities of the other Party where access to CMI is required

shall be limited to those necessary for official purposes. Authorization to visit a facility which is located in the territory of the country of one Party shall be granted only by the Party. The visited Party shall be responsible for advising the facility of the proposed visit, the topic, the scope, and highest level of CMI that may be furnished to the visitor. Requests for visits by representatives of the Parties shall be submitted through the appropriate offices of the Embassy of the United States of America in Tokyo or United States Forces Japan Headquarters in the case of United States visitors, and through the Embassy of Japan in Washington, D.C. in the case of Japanese visitors.

ARTICLE 9

TRANSMISSION

CMI shall be transmitted between the Parties through Government-to-Government channels. Upon such transfer, the Recipient Party shall assume responsibility for custody, control and security of the CMI.

ARTICLE 10

SECURITY OF FACILITIES

Each party shall be responsible for the security of all governmental facilities where CMI of the other Party is kept and shall assure that, for each such facility, qualified government officials are appointed who shall have the responsibility and authority for the control and protection of CMI subject to this Agreement.

ARTICLE 11

STORAGE

The Parties shall store CMI in a manner that assures access only by those individuals who have been authorized access pursuant to Articles 7 and 16.

ARTICLE 12

SECURITY REQUIREMENTS DURING TRANSMISSION

The minimum requirements for the security of CMI during transmission shall be as follows:

(a) Classified Documents and Media

(i) Documents and media containing CMI shall be transmitted in double, sealed envelopes with the innermost envelope bearing only the classification of the documents or media and the organizational address of the intended recipient and the outer envelope bearing the organizational address of the recipient, the organizational address of the sender, and the registry number, if applicable.

(ii) No indication of the classification of the enclosed documents or media shall be made on the outer envelope. The sealed envelope shall then be transmitted according to the prescribed regulations and procedures of the releasing Party.

(iii) Receipts shall be prepared for packages containing classified documents or media that are transmitted between the Parties and a receipt for the enclosed documents or media shall be signed by the final recipient and returned to the sender.

(b) Classified Equipment

(i) Classified equipment shall be transported in sealed, covered vehicles or be securely packaged or protected in order to prevent identification of its details, and kept under continuous control to prevent access by unauthorized persons.

(ii) Classified equipment which must be stored temporarily

awaiting shipment shall be placed in a storage area that provides protection commensurate with the level of classification of the equipment. Only authorized personnel shall have access to the storage area.

(iii) Receipts shall be obtained on every occasion when classified equipment changes hands en route.

(iv) Receipts shall be signed by the final recipient and returned to the sender.

(c) **Electronic Transmissions**

CMI transmitted by electronic means shall be protected during transmission using encryption appropriate for that level of classified information. Information systems processing, storing, or conveying CMI shall receive security accreditation by the appropriate authority of the Party employing the system.

ARTICLE 13

DESTRUCTION

(a) The Parties shall destroy classified documents and media by burning, shredding, pulping, or other means preventing reconstruction in whole or in part of the CMI.

(b) The Parties shall destroy classified equipment beyond recognition or modify it so as to preclude reconstruction in whole or in part of the CMI.

ARTICLE 14

REPRODUCTION

When the Parties reproduce classified documents or media, they shall also reproduce all original security markings thereon or mark on each copy. The Parties shall place such reproduced classified documents or media under the same controls as the original classified documents or media. The Parties shall limit the number of copies to that required for official purposes.

ARTICLE 15

TRANSLATIONS

The Parties shall ensure that all translations of CMI are done by individuals with personnel security clearances pursuant to Articles 7 and 16. The Parties shall keep the number of copies to a minimum and control the distribution. Such translations shall bear appropriate security classification markings and a suitable notation in the language into which it is translated indicating that the document or media contains CMI of the releasing Party.

ARTICLE 16

RELEASE OF CMI TO CONTRACTORS

Prior to the release to a contractor (including a subcontractor, whenever the term is used herein) of any CMI received from the other Party, the recipient Party shall take appropriate measures, in accordance with its national laws and regulations, to ensure, that:

(a) no individual is entitled to access to CMI solely by virtue of rank, appointment, or a personnel security clearance;

(b) the contractor and the contractor's facilities have the capability to protect CMI;

(c) all individuals whose official duties require access to CMI have personnel security clearances;

(d) a personnel security clearance is determined in the same manner as provided for in Article 7;

(e) appropriate procedures are implemented to provide assurance that the criteria referred to in Article 7 (c) have been met with respect to any individual granted access to CMI;

(f) all individuals having access to CMI are informed of their responsibilities to protect the information;

(g) initial and periodic security inspections are carried out by the recipient Party at each contractor facility where the releasing Party's CMI is stored or accessed to ensure that it is protected as required in this Agreement;

(h) access to CMI is limited to those persons whose official duties require such access;

(i) a registry of individuals with personnel security clearances and who are authorized to have access to such information is maintained at each facility;

(j) qualified individuals are appointed who shall have the responsibility and authority for the control and protection of CMI;

(k) CMI is stored in the same manner as provided for in Article 11;

(l) CMI is transmitted in the same manner as provided for in Articles 9 and 12;

(m) classified documents and classified equipment are destroyed in the same manner as provided for in Article 13;

(n) classified documents are reproduced and placed under control in the same manner as provided for in Article 14; and

(o) translation of CMI is done and copies are treated in the same manner as provided for in Article 15.

ARTICLE 17

LOSS OR COMPROMISE

The releasing Party shall be informed immediately of all losses or compromises as well as possible losses or compromises of its CMI and the recipient Party shall initiate an investigation to determine the circumstances. The results of the investigation and information regarding measures taken to prevent recurrence shall be forwarded to the releasing Party by the recipient Party.

ARTICLE 18

VISITS BY SECURITY REPRESENTATIVES

Implementation of the foregoing security requirements can be advanced through reciprocal visits by security representatives of the Parties. Accordingly, security representatives of each Party, after prior consultation, shall be permitted to visit the other Party to discuss security procedures and observe their implementation in the interest of achieving reasonable comparability of their respective security systems on mutually agreed venues and in a mutually satisfactory manner. Each Party shall assist the security representatives in determining whether CMI provided by the other Party is being adequately protected.

ARTICLE 19

ENTRY INTO FORCE, AMENDMENT, DURATION AND TERMINATION

(a) This Agreement shall enter into force on the date of signature.

(b) Amendments to the present Agreement shall be entered into by mutual consent of the Parties and shall enter into force as of the date of the signature thereof.

(c) This Agreement shall remain in force for a period of one year and shall be automatically extended annually thereafter unless either Party notifies the other in writing through the diplomatic channel ninety days in advance of its intention to terminate the Agreement.

(d) Notwithstanding the termination of this Agreement, all CMI provided pursuant to this Agreement shall continue to be protected in accordance with the provisions of this Agreement.

DONE at _____ on _____, in duplicate, in Japanese and English languages, both texts being equally authentic.

For the Government of Japan:

//signature//

For the Government of the United States of America:

//signature//

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ANNEX

The Japanese national laws and regulations referred to in paragraph (b) of Article 1:

(1) Secret Protection Law to Implement the Mutual Defense Assistance Agreement and Other Related Agreements between Japan and the United States of America (Law No. 166, 1954)

(2) Self-Defense Forces Law (Law No. 165, 1954)

(3) Law on Special Measures concerning Criminal Cases to Implement the Agreement under Article VI of the Treaty of Mutual Cooperation and Security between Japan and the United States of America, regarding Facilities and Areas and the Status of United States Armed Forces in Japan (Law No. 138, 1952)

(4) National Public Service Law (Law No. 120, 1947)

End text.

SCHIEFFER